Office-Supreme Court, U.S.
FILED
JAN 27 1965
JOHN F. DAVIS, CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1964

No. 763

CITY OF CORONADO and R. J. TOWNSEND, a taxpayer,

Appellants,

vs.

THE SAN DIEGO UNIFIED PORT DISTRICT, MILES BOWLER, B. F. COGGAN, JAMES GLASGOW, C. A. LARSEN, D. D. MCELFRESH, LARRY RUEHLE and DOE I, as port commissioners acting as the Board of Commissioners of the San Diego Unified Port District; THE STATE OF CALIFORNIA, Defendant pursuant to Section 6308 of the Public Resources Code of the State of California; et al.,

Appellees.

On Appeal from the District Court of Appeal of the State of California, Fourth Appellate District

BRIEF IN OPPOSITION TO MOTION OF APPELLEES TO DISMISS APPEAL

JOHN R. GOODBODY,
City Attorney of the City of Coronado,
Coronado, California,
GEORGE A. BLACKSTONE,
CASPAR W. WEINBERGER,
M. LAURENCE POPOFSKY,
JOHN H. CUTLER,
HELLER, EHRMAN, WHITE & MCAULIFFE,
14 Montgomery Street, San Francisco 4, California,
Attorneys for Appellants.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

Subject Index

	Page
Decision below	2
Jurisdiction	2
Statutes involved	2
Questions presented	3
Statement of the case	4
Argument	4
A. Equal protection contention	5
B. Due process contention	9
Conclusion	14

Table of Authorities Cited

Cases

Dorsey v. Fortson, ... U.S. ....., ...S. Ct. ....., ...L. Ed. 2d..... (1965), reversing 228 F. Supp. 259 (N.D. Ga. 1964) 8

Georgia v. Pennsylvania R.R. Co., 324 U.S. 439, 89 L. Ed. 1051 (1945) 4

Gomillion v. Lightfoot, 364 U.S. 339, 5 L. Ed. 2d 110, 81 S. Ct. 125 (1960) 10

Hunter v. Pittsburgh, 207 U.S. 161, 52 L. Ed. 151, 28 S. Ct. 40 (1907) 10, 11, 12

Johnson v. Genessee County, Mich., 232 F. Supp. 563 (E.D. Mich. 1964) 9

Laramie County v. Albany County, 92 U.S. 307 (1875)... 11

Massachusetts v. Mellon, 262 U.S. 447, 67 L. Ed. 1078 (1923) 4, 5

Mt. Pleasant v. Beckwith, 100 U.S. 514, 25 L. Ed. 699 (1879) 11

Morgan v. Beloit, 74 U.S. (7 Wall.) 613 (1868) 11

Reynolds v. Sims, 377 U.S. 533, 12 L. Ed. 2d 506 (1964).. 8

Statutes

San Diego Unified Port District Act (California Stats. 1962, First Ex. Sess., Ch. 67, as amended, California Stats. 1963, Reg. Sess., Ch. 673) 2, 5, 6, 7, 8, 9, 10, 11, 13, 14

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1964

No. 763

CITY OF CORONADO and R. J. TOWNSEND, a taxpayer,

Appellants,

vs.

THE SAN DIEGO UNIFIED PORT DISTRICT, MILES BOWLER, B. F. COGGAN, JAMES GLASGOW, C. A. LARSEN, D. D. MCELFRESH, LARRY RUEHLE and DOE I, as port commissioners acting as the Board of Commissioners of the San Diego Unified Port District; THE STATE OF CALIFORNIA, Defendant pursuant to Section 6308 of the Public Resources Code of the State of California; et al.,

Appellees.

On Appeal from the District Court of Appeal of the State of California, Fourth Appellate District

BRIEF IN OPPOSITION TO MOTION OF APPELLEES TO DISMISS APPEAL

Appellants City of Coronado and R. J. Townsend submit this Brief in opposition to the motions of appellees the San Diego Unified Port District and its

port commissioners and the State of California to dismiss this appeal on the ground that it does not present substantial federal questions. This Brief supplements appellants' Jurisdictional Statement filed in this Court on December 16, 1964, in which many of the arguments advanced by appellees in support of their motions were anticipated and disposed of.

DECISION BELOW

The decision of the District Court of Appeal, State of California, Fourth Appellate District, is appended to appellants' Jurisdictional Statement as Exhibit "A" and is reported at 227 A.C.A. 493, 38 Cal. Rptr. 834 (1964).

JURISDICTION

The jurisdictional requirements are adequately set forth in appellants' Jurisdictional Statement, pp. 2-4. The pertinent facts are not controverted by appellees.

STATUTES INVOLVED

Appellants challenge the constitutionality of certain provisions of the San Diego Unified Port District Act (California Stat. 1962, First Ex. Sess., Ch. 67, as amended, California Stat. 1963, Reg. Sess., Ch. 673) which is set forth in Appendix "B" to appellants'

Jurisdictional Statement.[1] Appellants contend that this statute infringes rights secured under the equal protection and due process clauses of the fourteenth amendment.

QUESTIONS PRESENTED

Under the guise of restating the questions presented by this appeal with particular reference "to the facts presented", appellees so arrange the facts as to obscure the significant issues actually involved in these proceedings. (Appellees' Brief, pp. 2-3.) For the convenience of this Court, appellants repeat the questions presented as set forth in their Jurisdictional Statement:

> (a) When a California statute authorizes establishment of a unified harbor district pursuant to electoral procedures under which voters residing in one of the communities in the area designated for inclusion in the district are classified as citizens of their own municipality and empowered through such classification to keep their city independent of the district, does the equal protection clause of the fourteenth amendment require voters residing in another community in the area designated for inclusion to be similarly classified as citizens of their own municipality and equally endowed with the right to prevent the involuntary inclusion of their city in the district?
>
> (b) When a California statute authorizes establishment of a unified harbor district pursuant

---

[1] The San Diego Unified Port District Act is often referred to in this Brief as "Chapter 67" in accordance with the practice adopted by the District Court of Appeal.

to the above-described electoral procedures and requires the district to assume the existing debt obligations of one of the municipalities while obligating all of the taxpayers in the district to guarantee the assumed indebtedness, are taxpayers of another municipality deprived of their property without due process of law as a result of the involuntary inclusion of their city in the district?

STATEMENT OF THE CASE

Appellants' Jurisdictional Statement describes those facts which appellants believe entitle them to relief under the equal protection and due process clauses of the fourteenth amendment. (Juris. Stat. pp. 5-9.)

ARGUMENT

This appeal presents substantial federal questions—questions arising from appellants' forced inclusion in the San Diego Unified Port District and their involuntary assumption of San Diego's antecedent debt obligations. Appellants submit that these events, perpetrated under a statute of the State of California, violated rights secured to them under both the equal protection and due process clauses of the fourteenth amendment.[2]

---

[2]It is perfectly apparent that appellant City of Coronado maintains this appeal only in its capacity as *parens patria* in order to vindicate federally protected rights and interests of its citizens, taxpayers and property owners. See *Georgia v. Pennsylvania R.R. Co.*, 324 U.S. 439, 89 L. Ed. 1051 (1945); contrast *Massachusetts*

Appellees, hastening to point out that the ballots cast in Coronado "comprised about 2% of the total district vote" (Appellees' Brief, p. 4), exhort this Court to ignore the injustice inherent in the unified district scheme and urge that appellants' contentions be summarily dismissed as those of an insignificant minority whose constitutional rights are of little consequence. Thus appellees declare: "[t]he District has work to do, and it should be permitted to get on with it, unhindered by the cloud this litigation has hung over it." (Appellees' Brief, p. 17.)

This Court should, of course, reject appellees' suggestion that the constitutional rights and interests of appellants can be effaced simply because they are a minority and should authorize the issuance of appropriate declarations establishing appellants' right to remain independent of the district.

A. EQUAL PROTECTION CONTENTION

As demonstrated in appellants' Jurisdictional Statement, pp. 10-14, the electoral formula incorporated in Chapter 67 enabled voters in San Diego to cast their ballots as representatives of their unique interests as San Diego residents. If a majority of the voters in San Diego opposed establishment, the district could

---

v. Mellon, 262 U.S. 447, 67 L. Ed. 1078 (1923). Needless to say, prosecution of this appeal demonstrates that the people of Coronado, acting through their duly constituted municipal authorities, remain adamant in their desire to extricate their municipality from the district and secure redress for the injustice caused by their forced inclusion in the district.

not have been formed even though a majority of the entire bay area electorate favored establishment. On the other hand, Coronado's electors were compelled to vote as members of a heterogeneous, artificial electorate bearing no relationship to their interests and obligations as citizens of Coronado. Notwithstanding the overwhelming opposition of Coronado's voters, the district could be, and was formed.

The discrimination resulting from the legislature's selection of municipal citizenship as the basis for differentiating between electors is clear: voters in Coronado were denied the right to remain independent of the unified port scheme whereas that precise privilege was extended to franchise holders in San Diego through their singular power to veto the district.[3]

Appellees do not deny that voters in Coronado were arbitrarily cast into a specially contrived electorate. Rather, misusing the mathematics of "weight" familiarized by this Court's reapportionment cases, appellees contend that Chapter 67's bifurcated electoral scheme actually favored voters in Coronado.

But appellees do not and cannot explain how this advantage in "weight" could possibly redound to ap-

[3]Appellees obfuscate the issue by insisting that "Coronado is asking for the right to *veto* the district's formation, not the right to say independent of it." (Appellees' Brief, p. 8 fn.) In this respect, appellees are less than candid. Appellants seek only declarations removing the City of Coronado from the district without disrupting the latter's continued operation as a port authority. Such relief fully accords with the policy embodied in Section 88 of Chapter 67 enacted by the 1963 legislature of the State of California after commencement of these proceedings. (Stat. 1963, Ref. Sess., Ch. 673.) See *Conclusion, post.*

pellants' benefit. Under Chapter 67's voting formula, only San Diego's voters were classified as municipal electors and thereby empowered to keep their city outside the district. That legislative classification was not extended to residents of smaller cities such as Coronado. To the contrary, Coronado's electors were compelled to cast their ballots as part of a composite electorate embracing no less than four cities. Whatever the relative "weight" of the ballots when analyzed in isolation from the facts at bar, electors in San Diego could never be compelled to be unwilling parties to the unified harbor scheme; Coronado's electors could—and were. Thus, in the only terms that matter, Chapter 67's electoral scheme favored San Diego electors at the expense of Coronado electors solely because they reside in different communities.

Presenting a caricature of appellants' equal protection contention, appellees view that claim as "based upon the premise that the equal protection clause of the fourteenth amendment requires the vote of one city to count equally to the vote of another city, without reference to the number of voters residing in either". (Appellees' Brief, p. 8.) This contrived "premise" exists only in appellees' imagination[4]; it is no part of appellants' case.[4] Appellants did not draft Chapter 67. That task was performed by the legislature of the State of California. It was those law-

[4]Appellants do not advance a definite standard of equal protection supposedly applicable to all electoral controversies, as appellees imply. Nor need such a standard be espoused by this Court in order to accord appellants relief. What a state *might* do through *different* procedures is irrelevant. What California attempted to do through Chapter 67 is all that is before this Court.

makers who singled out voters in San Diego for separate and favored treatment solely because of their residence in that municipality. The vote of electors by city was made the relevant classification by the legislature, not by appellants; and this classification violates the mandate of *Reynolds v. Sims*, 377 U.S. 533, 12 L. Ed. 2d 506, 526, (1964): "voters cannot be classified, constitutionally, on the basis of where they live."

Having selected municipal citizenship and homesite as the relevant criteria in defining the voting attributes of San Diego's electors, equal protection required the legislature to use the same criteria in defining the voting attributes of Coronado's electors. This is especially true since Chapter 67's voting scheme offered San Diego's electors the opportunity to foist their municipal debts upon the citizens of Coronado while depriving Coronado's voters of any opportunity to avoid that injustice.

The recent decision of this Court in *Dorsey v. Fortson*, ..., U.S. ....., ... S. Ct. ....., ... L. Ed. 2d ..... (1965), *reversing* 228 F. Supp. 259 (N.D.Ga. 1964) cannot salvage California's voter classification scheme from invalidation under the equal protection clause. In *Dorsey*, this Court acknowledged that, quite aside from numbers of voters or claimed disparity in weight, a state legislature cannot favor certain groups of voters over others solely because they reside in different areas. (Compare Appellees' Brief, p. 11). Under the Georgia scheme however, it was impossible to tell from the record, whether a

preferred class of voters had been in fact created by virtue of the classification there in issue. Accordingly, this Court declined to invalidate the Georgia scheme while indicating that subsequent proof that it operated in a discriminatory manner would justify reconsideration.

Here the discriminatory operation of Chapter 67 is manifest. Use of municipal citizenship as the criteria of classification has demonstratively impaired appellants' exercise of their constitutional rights. The electoral scheme of Chapter 67 has run its full course; its discriminatory operation cannot be gainsaid.[5]

B. DUE PROCESS CONTENTION

Chapter 67 empowered San Diego's electors to ease their own municipal burdens by shifting a portion of the outstanding debt obligations of the City of San Diego to property owners residing in the City of Coronado. This was accomplished through the following mechanisms: 1) by requiring the district to assume San Diego's existing debt; and 2) by obligating all taxpayers within the district to guarantee the assumed obligations by subjecting their property to taxation if revenues proved inadequate to service or retire the assumed debentures.

---

[5]Appellants submit that the remarkable opinion in *Johnson v. Genessee County, Mich*, 232 F. Supp. 563 (E.D. Mich. 1964) (cited though not relied upon by appellees in Brief p. 10 fn.) is manifestly in error so far as it purports to hold that the federal writ under the United States Constitution does not protect voters casting their ballots in state elections conducted at less than statewide level.

Under Chapter 67's voting formula, Coronado's electors were unable to keep their city independent of the district. As a result, Coronado's property owners now stand surety for the district's assumed debts originally contracted by the voters of San Diego.

Appellees, like the District Court of Appeal, suggest that *Hunter v. Pittsburgh*, 207 U.S. 161, 52 L. Ed. 151, 28 S.Ct. 40 (1907), cures the unfairness of this scheme much in the manner of an old-fashioned tonic palliative. Appellants submit that *Hunter* is not a constitutional "blank check" enabling California to deal with its citizens and their property in this arbitrary and unjust manner.

As explained in appellants' Jurisdictional Statement, pp. 15-18, *Hunter* concerned only anticipated, future indebtedness, not pre-existing debentures. See 207 U.S. at 163. Indeed, the anticipatory character of the *Hunter* debt has been carefully noted by this Court in its description of the *Hunter* holding. See *Gomillion v. Lightfoot*, 364 U.S. 339, 342-44, 5 L. Ed. 2d 110, 81 S. Ct. 125 (1960). Far from being a "classic distinction without a difference," as appellees discursively suggest (Appellees' Brief, p. 13), the distinction between the forced assumption of anticipated future debts and pre-existing obligations is fundamental.

With only future indebtedness at stake, electors casting ballots favoring municipal consolidation or formation of a special district would do so knowing their votes would constitute authorization for the imposition of new municipal or district obligations—obligations which each elector would have to bear to

the same extent as all other property owners. No such equality attends a balloting where pre-existing indebtedness is involved. Antecedent debts necessarily represent outstanding obligations of some, if not a majority, of the electors; inherent in this situation is the danger that electors burdened with pre-existing debt obligations may be able to foist them upon an objecting minority.*

The case at bar demonstrates the basic unfairness of electoral schemes involving the transfer of antecedent debts. San Diego voters, comprising 84% of the bay area electorate, went to the polls with the opportunity to compel Coronado's citizens to share the burdens of San Diego's existing debt obligations. Coronado's electors were offered no means of escaping that injustice. Surely, *Hunter* cannot immunize this scheme from invalidation under the due process clause.

Appellees' other contentions are as misguided as their reliance on *Hunter*.

---

*The 19th Century decisions cited by appellees as condoning the arbitrary transfer of pre-existing indebtedness (Appellees' Brief, p. 14) are inapposite or in fact support appellants' contention. *Mt. Pleasant v. Beckwith*, 100 U.S. 514, 25 L. Ed. 699 (1879) and *Morgan v. Beloit*, 74 U.S. (7 Wall.) 613 (1868), concern the rights of holders of public corporation bonds; moreover, the judicially-approved statute in *Morgan*—unlike Chapter 67 but like *Hunter*—required an equitable apportionment of debt obligations among the areas which had originally contracted them. (74 U.S. at 617.) *Laramie County v. Albany County*, 92 U.S. 307 (1875), involved a legislative boundary scheme which operated to the detriment of the complaining owners who had themselves authorized incurrence of the original indebtedness, in contrast to the residents of Coronado. Appellants would, of course, welcome the opportunity to brief these decisions fully in the event that this Court grants them a hearing.

Preoccupied with appellants' failure to allege that Coronado's citizens have already incurred higher tax bills to amortize or service San Diego's pre-existing debts, appellees conclude that appellants have not been deprived of anything. (Appellees' Brief, pp. 14-15.) However, it is clear from the face of the complaint that appellants were deprived of their property at the inception of the district since they were then forced to become sureties or guarantors for San Diego's debts. Moreover, *Hunter* itself forecloses appellees' theory that the due process issue is not "ripe" for adjudication.

In truth, appellees would have this Court undertake the role of an accountant in determining the "ripeness" of the controversy and whether appellants have been deprived of their property. Thus, this Court is urged to consider the value of assets transferred by San Diego to the district in conjunction with that city's transfer of its antecedent debts. However, if these facts are deemed relevant, this cause should be remanded for further proceedings, at which time appellants will be afforded an opportunity—never before granted to them in this litigation—to prove that the district's operating revenues are insufficient, not only to repay the principal of the assumed indebtedness, but also to meet interest and other carrying charges and that, as a result, tax assessments on property situate in the City of Coronado have already increased.

Since this appeal is from a judgment entered after general demurrers had been sustained, appellants should be accorded an opportunity to demonstrate the

full sweep of their injury, including a chance to show that the entire transfer process is harmful to them. Appellants want no part of San Diego's assets; still ess do they want the evanescent interest in those assets accorded them by Chapter 67. And under no circumstances do they desire to shoulder the burdens of San Diego's debts.

The approval of district bond propositions by Coronado voters in the 1964 general election underscores the inherent unfairness of Chapter 67's bond assumption provisions.[7]

Those propositions are comparable to the balloting involved in *Hunter* since all electors in the district voted with the knowledge that affirmative ballots constituted authorization for the incurrence of new obligations which would be equitably shouldered by all residents of the district. As seen, when the establishment of the district was voted upon, San Diego electors voted with the knowledge that formation of the district would enable them to foist their obligations upon voters residing in Coronado and in the other bay area cities.

---

[7]Although appellees eagerly bring the facts concerning the 1964 bond propositions before this Court, it may be observed that such facts are scarcely within the ambit of judicial notice. Apparently, appellees do not claim otherwise. See Appellees' Brief, p. 5, fn. Moreover, the "Certificate of Charles J. Sexton, Registrar of Voters, County of San Diego" dated January 5, 1964, appears to be a document executed for the sole purpose of influencing this Court, rather than an instrument prepared by that official in the course of his statutory duties. In any event, it is difficult to perceive how matters occurring two years after the facts giving rise to appellants' cause of action can materially affect adjudication of their rights.

By endorsing the 1964 bond propositions, Coronado's electors were simply exercising their judgment on the merits of the new bond issue in accordance with then existing circumstances. By such action, however, appellants did not, and do not, waive their objections to the procedures under which they have been forced to bear the burdens of San Diego's pre-existing bonded indebtedness.

CONCLUSION

Because of the fundamental unfairness of the procedures under which the district was formed, appellants seek declarations freeing the City of Coronado from the district's contours.

The declarations sought are fully consonant with the policy embodied in Section 88 of Chapter 67, adopted by the California legislature in 1963, long after the commencement of these proceedings. (Stat. 1963, Reg. Sess., Ch. 673.) That section is clearly designed to enable the City of Coronado to be excluded from the district without disrupting the continued operation of the port authority. It further attests to the legislature's conclusion that fulfillment of the goals outlined in Section 2 of Chapter 67 may be achieved without the forced inclusion of appellants therein. Contrast Appellees' Brief, pp. 3-4.

The people of the City of Coronado have opposed the formation of the district since the time when the scheme was first proposed in the state legislature. The injustice inherent in statutory provisions authorizing

the district's establishment and the transfer to it of antecedent debts of constituent municipalities requires careful review by this Court.

Dated, January 26, 1965.

Respectfully submitted,

JOHN R. GOODBODY,
City Attorney of the City of Coronado,
GEORGE A. BLACKSTONE,
CASPAR W. WEINBERGER,
M. LAURENCE POPOFSKY,
JOHN H. CUTLER,
HELLER, EHRMAN, WHITE & MCAULIFFE,
Attorneys for Appellants.